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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/193,989	11/18/1998	JOHN REXROAD	CUPI-15	2674
26948	7590	05/23/2005	EXAMINER	
ELLIS & VENABLE, PC 101 NORTH FIRST AVE. SUITE 1875 PHOENIX, AZ 85003			SALVATORE, LYNDIA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/193,989

Applicant(s)

REXROAD, JOHN

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3 and 6-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's petition and accompanying remarks filed 01/08/04 have been entered.

Applicant's petition to withdraw holding of abandonment has been granted as set forth in the letter mailed 01/19/05. Applicant's arguments with respect to claim 3 have been found persuasive. As such, the anticipation rejection of claim 3 is hereby withdrawn for reasons set forth herein below. Applicant's remarks regarding the patentability of claims 1-2 and 4-5 have been fully considered but are not found persuasive for reasons set forth herein below.

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-2 and 4-5 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rexroad et al., US 5,582,266.

Rexroad et al., disclose a safety and debris net system. Rexroad et al., discloses in the background of the invention, dipping nylon yarns in a solution that causes shrinkage. A plurality of C-ring fasteners are provided (col 2, 40); it should be noted that the Examiner is equating Rexroad's C rings to the adjustment bolts of the present invention. As shown in Figure 3, a frame surrounds the netting.

Applicant argues that the prior art of Rexroad et al., fails to teach the instantly claimed net system. Specially, Applicant argues that Rexroad et al., fails to teach a net system comprising a rigid frame, a net formed from water soluble shrinkable yarn materials, eyebolts, and a tensioning bar or a locating cable.

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With specific regard to providing a locating cable, it is respectfully pointed out that Applicant fails to set forth this feature in any of the above rejected claims. Thus, Applicant's arguments regarding this limitation are not commensurate in scope with the presently claimed subject matter.

With specific regard to the shrinkage limitations, the Examiner maintains that the dipped nylon yarns disclosed in the background of Rexroad et al., presently meet the limitation of a high shrinkage yarn. Though, Rexroad et al., teaches employing other yarn materials as an improvement over providing dipped nylon yarns, such a disclosure cannot be ignored though it is not necessarily preferred. It is the position of the Examiner that since Rexroad et al., discloses providing a high shrinkage yarn, the manipulative method of how said yarn is rendered high shrinkage is irrelevant. The Examiner respectfully points out that Applicant is merely claiming a yarn, which is "capable" of high shrinkage. It has been held that the recitation of that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

With specific regard to the water soluble limitation, Applicant argues that the yarns disclosed by Rexroad et al., are not water soluble. However, absent a teaching and/or limitations to a specific yarn material (e.g. polyvinyl alcohol), the yarn materials taught by Rexroad et al., are considered "water soluble" by the Examiner until explicitly evidenced otherwise.

With regard to Applicant's arguments that Rexroad et al., fails to teach a net system having warp and weft strands, it is respectfully pointed out that Applicant is merely claiming warp and weft strands, not a particular weave structure. To that end, Rexroad et al., explicitly

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teaches a net which is mesh structure having first and second elongate members intersecting at spaced points to define a matrix of interconnecting members which define the mesh structure (Col. 2, 35-40). As such, it is the position of the Examiner that the mesh structure defined by Rexroad et al., presently meets the limitations of providing a net with warp and weft strands.

***Allowable Subject Matter***

4. Claims 3 and 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

With specific regard to claim 3, Applicant argues that the prior art fails to teach a tensioning bar which is threaded between the boarder and the weft and warp members. Upon further consideration of the prior art, the Examiner concedes that Rexroad et al. fails to teach such a feature. Rexroad et al., only teaches a boarder member made of polypropylene rope and does not teach or fairly suggest threading said rope as claimed.

With specific regard to claims 6-12, as previously set forth, said claims are allowable over the prior art of record for reasons set forth in sections 5-6 of the last Office Action. An updated art search did not produce any new substantial art for which to base a rejection and presently no motivation exists to combine references to form an obviousness type rejection.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 23, 2005

ls

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER